

DOCKET NO. NHH-CV22- 5005219-S : SUPERIOR COURT/HOUSING SESSION

PALJA STANOVIC : JUDICIAL DISTRICT OF NEW HAVEN

v. : AT NEW HAVEN

JOHN MCELVEEN : MAY 10, 2022

MOTION TO DISMISS

Pursuant to Connecticut Practice Book § 10-30, the Defendant moves to dismiss the above action for lack of subject matter jurisdiction. In support thereof, the Defendant represents that:

1. The premises are private apartment housing. The Defendant, Mr. John McElveen has a federally-subsidized Housing Choice Voucher (HCV), commonly known as “Section 8.”
2. Upon entering into the tenancy, the Plaintiff Mr. Stanovic and the Public Housing Authority (PHA) which administers the Section 8 voucher, here, the Housing Authority of New Haven, entered into a Housing Assistance Payments (HAP) contract, whereby the Housing Authority of New Haven would and did pay Plaintiff a substantial portion of the rent for the subject premises each month. The Defendant Mr. McElveen paid the remaining portion of the rent each month and continues to do so.
3. Under the rules of the Housing Choice Voucher HAP contract and Connecticut case law interpreting federal law, because the Defendant has a HCV, Plaintiff is required to serve a copy of the notice to quit (NTQ) on the public housing agency (PHA) administering the voucher. *See* 24 C.F.R. § 982.310(e)(2)(ii).

TESTIMONY REQUIRED; ORAL ARGUMENT REQUESTED

4. The requirement that a landlord serve the PHA in addition to the tenant is a jurisdictional condition precedent to maintaining a summary process action in Connecticut. *See, e.g.*, 8 *Broadleaf Circle LLC v. Pittman*, 70 Conn. L. Rptr. 63, 2020 WL 4931276 (Conn. Super. Ct. Mar. 4, 2020) (Shah, J.) (attached as Exhibit A) (dismissing case for lack of subject matter jurisdiction where landlord failed to serve a copy of the NTQ on the PHA).
5. The requirement of notice of an eviction to the PHA, accomplished by service of the notice to quit on the PHA, is a jurisdictional prerequisite. Accordingly, Plaintiff is required to plead and prove its compliance with 24 C.F.R. § 982.310(e)(2)(ii). *Presidential Village, LLC v. Perkins*, 332 Conn. 45 (2019) (compliance with federal regulations for termination of Section 8 tenancy is jurisdictional prerequisite); *Fink v. Golenbock*, 238 Conn. 183, 199 n.13 (1996) (“The Plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.”).
6. In this case, Plaintiff has not alleged that it served a copy of the NTQ on the PHA.
7. Furthermore, Plaintiff makes no allegation in its Complaint that the premises are subject to the rules and regulations of the HAP contract governing the tenancy, to wit, the Plaintiff in his Complaint fails to plead the existence of the HAP contract nor does he plead the true and correct breakdown (PHA share and tenant share) in monthly rent allegedly owed.
8. Nor, in fact, did Plaintiff serve a copy of the NTQ on the PHA.
9. Plaintiff’s failure to comply with 24 C.F.R. § 982.310(e)(2)(ii) deprives this Court of subject matter jurisdiction.
10. Because this Court lacks subject matter jurisdiction, this case should be dismissed.

WHEREFORE, the Defendant moves for an Order dismissing the action.

JOHN MCELVEEN
THE DEFENDANT

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Yonatan E. Zamir
His Attorney
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ORDER

The foregoing motion having been duly considered by this Court and it appears that it ought to be granted. Therefore, it is hereby

ORDERED: that this action be and hereby is dismissed.

BY THE COURT

JUDGE

CLERK

DOCKET NO. NHH-CV22- 5005219-S : SUPERIOR COURT/HOUSING SESSION

PALJA STANOVIC : JUDICIAL DISTRICT OF NEW HAVEN

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MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

The Defendant, by and through undersigned counsel, hereby moves this Court that the instant action should be dismissed for lack of subject matter jurisdiction.

I. INTRODUCTION AND RELEVANT FACTS

This is a summary process eviction action brought by a landlord against a tenant based on an allegation of nonpayment of rent. The Plaintiff terminated the tenancy by alleged service of a notice to quit on the Defendant Mr. John McElveen on February 2, 2022. The notice to quit claimed nonpayment of rent “for the last 6 month [sic].” (Notice to Quit, Docket Entry No. 100.32). The Plaintiff then filed a one count complaint for nonpayment of rent, alleging a month-to-month tenancy which was terminated due to Defendant’s alleged failure to pay \$1050.00 of rent on January 1, 2022. (Complaint, Docket Entry 100.31).

The Defendant’s tenancy is subject to the terms of a federally-subsidized Housing Choice Voucher (HCV), commonly known as “Section 8” which is administered by a Public Housing Authority (PHA), here, the Housing Authority of New Haven. Upon entering into the tenancy, the Plaintiff Mr. Stanovic and the Public Housing Authority (PHA) which administers the Section 8 voucher, here, the Housing Authority of New Haven, entered into a Housing Assistance Payments (HAP) contract, whereby the Housing Authority of New Haven would and did pay Plaintiff a substantial portion of the rent for the subject premises each month. The

Defendant Mr. McElveen paid the remaining portion of the rent each month and continues to do so. The Defendant is a person with a disability, and is conserved of person and estate¹. He filed his own Answer in this matter on March 28, 2022 (Answer, Docket No 100.32) asserting a denial of all claims in the Complaint. The Plaintiff has not failed a Reply. Defendant, by and through undersigned counsel, now files the instant Motion to Dismiss the proceeding.

II. ARGUMENT

This case should be dismissed because of Plaintiff's failure to comply with federal regulations regarding the eviction of tenants subsidized by the federal Housing Choice Voucher (HCV) program.

A. Plaintiff Failed to Provide Notice of the Termination of the Tenancy to the PHA

The instant tenancy is subsidized by a federally-subsidized Housing Choice Voucher (HCV or "Section 8 voucher") and as such, the Plaintiff entered into a Housing Assistance Payments contract with the Housing Authority of New Haven. Accordingly, the tenancy is subject to the federal rules and regulations of the Section 8 Housing Choice Voucher program. Under federal law, a landlord who wishes to evict a tenant with a HCV must provide the public housing agency administering the voucher with a copy of the notice to quit. *See* 24 C.F.R. § 982.310(e)(2)(ii). Judge Shah of the Hartford Housing Session confronted a factually indistinguishable case last year in *8 Broadleaf Circle, LLC v. Pittman*. 70 Conn. L. Rptr. 63, 2020 WL 4931276 (Conn. Super. Ct. Mar. 4, 2020) (attached as Exhibit A). Reviewing the regulations and case law, the *Pittman* court explained: "Connecticut courts considering this specific federal regulation have found that summary process actions involving section 8 tenants

¹ On April 28, 2022, the Conservator of Person and Estate Mr, Reginald Finno contacted undersigned counsel and engaged him to to represent the Defendant in this matter.

require service of a copy of the notice to quit on the applicable public housing agency.” *Id.* at *2 (citing *Mark E. Shepard Properties v. Rivera*, 36 Conn. L. Rptr. 715, 716, Docket No. HDSP-125968 (Mar. 18, 2004, Dos Santos, J.) and *Hinkson v. Wilson*, 65 Conn. L. Rptr. 426, 428, Docket No. CV-17-6024234-S (Nov. 8, 2017, Hiller, J.T.R.), *vacated on other grounds*. Judge Shah granted the motion to dismiss.²

Plaintiff was required to serve a copy of the notice to quit on the public housing agency (PHA), as well as on the Defendant. *See* 24 C.F.R. § 982.310(e)(2)(ii). Failure to comply with federal preconditions to a summary process action is a jurisdictional defect requiring dismissal. *See generally Presidential Village, LLC v. Perkins*, 332 Conn. 45 (2019). Plaintiff has not alleged that it complied with this requirement. Nor, in fact, did Plaintiff comply with this requirement. Therefore, this case should be dismissed.

Because providing a copy of the notice to quit to the PHA is a jurisdictional prerequisite, the Plaintiff bears the burden of pleading and proving such service. *See Fink v. Golenbock*, 238 Conn. at 199 n.13. The Plaintiff has not pled such service in this case. Nor, in fact, did Plaintiff serve the PHA in compliance with 24 C.F.R. § 982.310(e)(2)(ii). Therefore, this case must be dismissed.

B. The Lack of Subject Matter Jurisdiction is a Fatal Defect and Its Absence Can Be Raised at Any Time

Conn. Prac. Bk. § 10-33 provides: “Any claim of lack of jurisdiction over the subject matter cannot be waived; and whenever it is found after suggestion of the parties or otherwise

² In addition to the cases cited in *Pittman*, Connecticut courts considering section 982.310(e)(2)(ii)’s similar but not identical predecessor, 24 C.F.R. § 882.215(C)(4), also dismissed cases where the landlord failed to provide the notice to quit to the PHA. *See Hinkson* at *2-3 (discussing cases decided under § 882.215(C)(4)).

that the court lacks jurisdiction of the subject matter, the judicial authority shall dismiss the action.”

As in any case, “[t]he Plaintiff bears the burden of proving subject matter jurisdiction, whenever and however raised.” *Fink v. Golenbock*, 238 Conn. 183, 199 n.13 (1996). “The requirement of subject matter jurisdiction cannot be waived by any party and can be raised at any stage in the proceedings.” *City of Waterbury v. Town of Washington*, 260 Conn. 506, 527 (2002) (quotation and citation omitted). “Before a landlord may pursue its statutory remedy of summary process... the landlord must prove its compliance with all the applicable preconditions set by state *and federal* law for the termination of a lease.” *Perkins*, 332 Conn. at 56 (emphasis added) (quoting *Jefferson Garden Assocs. v. Greene*, 202 Conn. 128, 143 (1987)). If the Court determines that the Plaintiff has not met its burden of establishing subject matter jurisdiction, the case must be dismissed.

III. CONCLUSION

For the foregoing reasons, Defendant respectfully moves that this case be dismissed for lack of subject matter jurisdiction.

Respectfully submitted,

JOHN MCELVEEN
THE DEFENDANT

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CERTIFICATION

This is to certify that on May 10, 2022 a copy of the foregoing was served, electronically and non-electronically to all counsel and self-represented parties, including via in-hand service:

Via In-Hand Service and Via Electronic Service:

PALJA STANOVIC
161 AUSTIN ROAD
MAHOPAC, NY 10541

_____/s/435532_____
Yonatan E. Zamir
Commissioner of Superior Court

EXHIBIT A

2020 WL 4931276

UNPUBLISHED OPINION. CHECK COURT RULES BEFORE CITING.
Superior Court of Connecticut,
Judicial District of Hartford, Housing Session at Hartford.

8 BROADLEAF CIRCLE, LLC

v.

Josephine PITTMAN

HFHCV206015613S

|

March 4, 2020

Opinion

Hon. Rupal Shah

*1 Pursuant to [Practice Book § 10-30 et seq.](#), the defendant Josephine Pittman¹ moves the court to dismiss the action because of the plaintiff's failure to serve the public housing agency with a copy of the notice to quit. The plaintiff filed an objection.² After consideration, the court grants the motion to dismiss.

¹ The plaintiff filed the present summary process action against Tillie Pittman and John Doe, and they are also defendants in this action. For convenience, all references to the defendant in this opinion are to Josephine Pittman.

² The plaintiff's objection concerns requirements for pre-termination notices and does not directly relate to the basis of dismissal raised by the defendant.

I

BACKGROUND

The plaintiff filed the present summary process action seeking possession of the premises because of the defendants' alleged non-payment of rent. The subject premises is located at 8 Broadleaf Circle, Windsor, Connecticut. The parties stipulate that the defendant's tenancy is subsidized pursuant to section 8 of the United States Housing Act of 1937, [42 U.S.C. § 1437f](#), Housing Choice Voucher Program and that the plaintiff did not serve a copy of the notice to quit on the public housing agency, J. D'Amelia & Associates (J. D'Amelia), that provides the housing voucher to the defendant.

II

LEGAL STANDARD

“[A] motion to dismiss ... properly attacks the jurisdiction of the court, essentially asserting that the plaintiff cannot as a matter of law and fact state a cause of action that should be heard by the court.” (Internal quotation marks omitted.) *Santorso v. Bristol Hospital*, 308 Conn. 338, 350, 63 A.3d 940 (2013). “A motion to dismiss tests, *inter alia*, whether, on the face of the record, the court is without jurisdiction.” (Internal quotation marks omitted.) *MacDermid, Inc. v. Leonetti*, 310 Conn. 616, 626, 79 A.3d 60 (2013). Specifically, Practice Book § 10-30(a) provides: “A motion to dismiss shall be used to assert: (1) lack of jurisdiction over the subject matter; (2) lack of jurisdiction over the person; (3) insufficiency of process; and (4) insufficiency of service of process.”

The standard regarding summary process is well established in Connecticut. “Summary process is a special statutory procedure designed to provide an expeditious remedy ... It enable[s] landlords to obtain possession of leased premises without suffering the delay, loss and expense to which, under the common-law actions, they might be subjected by tenants wrongfully holding over their terms ... Summary process statutes secure a prompt hearing and final determination ... Therefore, the statutes relating to summary process must be narrowly construed and strictly followed.” (Internal quotation marks omitted.) *St. Paul’s Flax Hill Co-operative v. Johnson*, 124 Conn.App. 728, 733, 6 A.3d 1168 (2010), cert. denied, 300 Conn. 906, 12 A.3d 1002 (2011). “When a defendant is a tenant of federally subsidized housing, federal law must be followed in addition to state law.” *Housing Authority v. Martin*, 95 Conn.App. 802, 808, 898 A.2d 245, cert. denied, 280 Conn. 904, 907 A.2d 90 (2006). The termination of a federally subsidized tenancy must comply with the applicable federal regulations. See *Jefferson Garden Associates v. Greene*, 202 Conn. 128, 132-33, 520 A.2d 173 (1987); but see *Presidential Village, LLC v. Phillips*, 325 Conn. 394, 404-05 n.11, 158 A.3d 772 (2017) (noting Department of Housing and Urban Development handbook is merely advisory). Any termination of the defendant’s tenancy is subject to the regulations at 24 C.F.R., part 982.

III

DISCUSSION

*2 The defendant contends that, as a condition precedent to the termination of the lease, the plaintiff was required by the regulations at 24 C.F.R. § 982.310(e)(2)(ii) to send a copy of the notice to quit possession to J. D’Amelia. The defendant also argues that the plaintiff was required by the Housing Assistance Payments (HAP) contract to deliver a copy of the notice to quit possession to J. D’Amelia. The plaintiff objects and claims that it has filed a valid summary process action.

To evict a federally subsidized tenant, the landlord is required to comply with state statutory requirements and with all federal law requirements. See *Jefferson Garden*, *supra*, 202 Conn. 132-33. Title 24 of the Code of Federal Regulations, § 982.310, provides, in relevant part: “(e) *Owner notice*.— ... (2) *Eviction notice*. (i) Owner eviction notice means a notice to vacate, or a complaint or other initial pleading used under State or local law to commence an eviction action. (ii) The owner must give the PHA a copy of any owner eviction notice to the tenant.”

The Supreme Court has found such regulations mandatory under federal housing legislation. See *Thorpe v. Housing Authority of Durham*, 393 U.S. 268, 275-77, 89 S.Ct. 518, 21 L.Ed.2d 474 (1969) (finding that specific circular issued by Department of Housing and Urban Development [HUD] was intended by HUD to be mandatory regulation). Connecticut courts considering this specific federal regulation have found that summary process actions involving section 8 tenants require service of a copy of the notice to quit on the applicable public housing agency. See *Mark E. Shepard Properties v. Rivera*, Superior Court, judicial district of Hartford, Housing Session, Docket No. HDSP-125968 (March 18, 2004, Dos Santos, J.) (36 Conn. L. Rptr. 715, 716) (finding as long as the public housing agency receives the notice to quit in time to mediate potential disputes between landlord and tenant and preserve housing subsidy for tenant if at all possible then service is valid under federal requirement); *Hinkson v. Wilson*, Superior Court, judicial district of Ansonia-Milford, Docket No. CV-17-6024234-S (November 8, 2017, Hiller, J.T.R.) (65 Conn. L. Rptr. 426, 428) (granting motion to dismiss because service of copies of notice to quit on public housing agency

occurred fifty-six days after serving notice to quit on tenant, fifty days after quit date, thirty-seven days after filing of summons and original complaint, thirty-three days after return date, and two days after filing of motion to dismiss).

Here, the plaintiff readily admits no copy of notice was provided to J. D'Amelia. Even if a copy of notice was to be sent now, the notice cannot be deemed to be valid. See *Hinkson v. Wilson*, *supra*, [65 Conn. L. Rptr. 428](#) (providing copies of notice to quit to public housing agency two days after tenant's filing of motion to dismiss insufficient to comply with federal law). Given the lack of compliance with the federal requirement, the court has no option other than to dismiss the present matter for lack of subject matter jurisdiction.

IV

CONCLUSION

Accordingly, the defendant's motion to dismiss is granted.

So ordered.

All Citations

Not Reported in Atl. Rptr., 2020 WL 4931276, 70 Conn. L. Rptr. 63

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